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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 944

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA,
Appellant,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, ET. AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

MOTION TO ADVANCE.

CARY D. LANDIS,
H. E. CARTER,
ROBERT J. PLEUS,
J. V. KEEN,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 944

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA,
Appellant,

vs.

JOHN P. BICKELL, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THOMSON & McKINNON, AND ALPHEUS C. BEANE, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF FENNER & BEANE,
Appellees.

MOTION FOR AN ORDER ADVANCING THE CASE ON THE DOCKET.

Comes now J. M. Lee, as Comptroller of the State of Florida, appellant herein, and moves the Court to enter an order advancing this case on the docket so that the same may be disposed of at the present term of the Court. In support of the motion, the appellant says:

That he is now, and has been at all times since January, A. D. 1933, the duly elected and acting Comptroller of the State of Florida; that as Comptroller he receives all moneys paid to the State of Florida as taxes and that he keeps proper records of all moneys received by the State from all sources, including taxes; that he is the disbursing

officer of the State and all bills and accounts against the State must be audited by him, and if found correct, paid by warrant drawn by him on the State Treasurer and countersigned by the Governor; that he is charged with the enforcement of Chapter 15,787, Laws of Florida, Acts of 1929, known as the Florida Documentary Stamp Tax Act.

That the following is a brief statement of the matter involved in this case:

The appellees in this case are stockbrokers, some of whose members are also members of stock exchanges operated solely outside of Florida. Each firm of stockbrokers maintains several branch offices in Florida where they accept orders from customers to buy or sell stocks and bonds upon stock exchanges located outside of Florida. In pursuing their business in their Florida branch offices, there are made by the customer or the broker, certain writings or documents such as, agreements to sell stocks or bonds, memoranda of sales of stocks or bonds and memoranda of deliveries of stocks or bonds. These writings or documents are made in Florida in connection with the sale or purchase of stocks or bonds that has, at the time the writing or document is made, taken place or is ordered to thereafter take place, wholly outside of Florida. The appellant claims that the writings or documents above described, which are made in Florida, were and are subject to the provisions of the Documentary Stamp Tax Act. The appellees filed their Bill of Complaint in the United States District Court in and for the Northern District of Florida, seeking to enjoin the appellant from enforcing the Act in reference to the writings or documents above set forth, claiming that the enforcement thereof would violate Clause 3 of Section 8 of Article I of the Constitution of the United States, as this would constitute a direct burden on inter-

state commerce, in which it is alleged the appellees are engaged, and Section I of the Fourteenth Amendment to the Constitution of the United States, as it would deprive the appellees of their property without due process of law, and by denying to them the equal protection of the laws. A three-judge statutory court granted an interlocutory injunction restraining the appellant from enforcing the Act in respect to the writings and documents above mentioned, and upon final hearing the court granted a permanent injunction upon the theory that the enforcement of the Act as above set out would bring the Act in conflict with Section I of the Fourteenth Amendment to the Constitution of the United States in that it would have the effect of taking the property of the appellees without due process of law. This appeal is taken from this final decree.

The apellant respectfully suggests the following reasons as to why this motion should be granted:

That all money collected from the enforcement of the Documentary Stamp Tax Act, less the expenses of collection, is paid into the General Revenue fund of the State; that from this fund are paid all salaries and other operating expenses of the following institutions maintained by the State:

The Florida State Farm at Raiford, Florida, which is the State Prison, with 3,800 inmates;

Florida State Hospital for the Insane at Chattahoochee, Florida, with 3,900 inmates;

The Florida Industrial School for Boys at Marianna, Florida, with 600 inmates;

The Florida Industrial School for Girls at Ocala, Florida, with 100 inmates;

A Home for Confederate Veterans at Jacksonville, Florida, with 40 veterans;

That from this fund is also paid all salaries of the Educational Institutions maintained by the State of Florida, to-wit:

The University of Florida at Gainesville, Florida, with an enrollment of 2,000 students;

The Florida State College for Women at Tallahassee, Florida, with an enrollment of 1,600 students;

The Florida School for the Deaf and Blind at St. Augustine, Florida, with an enrollment of 300 students;

The Florida Agricultural and Mechanical College for Negroes at Tallahassee, Florida, with an enrollment of 600 students;

That from this fund is also paid the salaries of the Governor and members of the Cabinet and their employees, and the salaries of the officers and employees of the State Board of Health.

At the present time a sufficient amount of revenue is being collected to pay the expenses and salaries above set forth as and when they become due; that it is estimated that beginning with the month of July and continuing through the month of December of this year, there will be a monthly deficit in this fund of approximately $100,000.00 and that this deficit will total approximately $500,000.00 by the first of December of this year; that when this deficit occurs, it will seriously embarrass the State of Florida in the operation of the government, especially in reference to the institutions above referred to.

It is estimated by the appellees, and so stated by them in open court; that if the Documentary Stamp Tax Act is enforced against them the State will derive therefrom revenue in an amount not less than $1,000.00 per day. Pending the determination of this cause, appellant cannot enforce the Act against other stockbrokers operating in the State. It is estimated by the appellant that if he could

enforce said Act against other stockbrokers operating in the State and doing a business similar to the business of the appellees, that the State would derive revenue therefrom in an amount not less than $500.00 per day. If the Court should decide that the Act may be enforced, the State will be virtually deprived of all taxes that accrue until the Court renders its decision, because no bonds have been posted by the appellees or other stockbrokers operating in the State, and it is highly uncertain as to whether or not the State could collect the accrued taxes. If the State should receive $1,500.00 per day from this source, beginning with the first day of July of this year, the above mentioned deficit would be very materially reduced and the embarrassment of the State in not being able to pay its bills and meet its payrolls as above set forth, would be substantially diminished.

The appellant respectfully suggests that this cause should be advanced on the docket for the reason that delay in this Court finally disposing of the matter will cause serious embarrassment in the operation of the government of the State of Florida as above set out.

All of which is respectfully submitted,

J. M. LEE,
As Comptroller of the State of Florida.
By H. J. CHANCE,
As Assistant Comptroller.

CARY D. LANDIS,
As Attorney General of the State of Florida,
H. E. CARTER,
Assistant Attorney General,
ROBERT J. PLEUS,
Assistant Attorney General,
J. V. KEEN,
Assistant Attorney General,
All of Tallahassee, Florida,
Solicitors for Appellant.

STATE OF FLORIDA,
County of Leon:

I hereby certify that on the date herein below set forth, personally appeared before me, H. J. Chance, who being first duly sworn says upon oath that he is Assistant Comptroller of the State of Florida, that he has read the above and foregoing motion for an order advancing the case on the docket and that the matters and things set out therein are true.

H. J. CHANCE.

Sworn to and subscribed before me this 9th day of April, A. D. 1934.

[Seal of Allie Yawn Brown, Notary Public, State of Florida At Large.]

ALLIE YAWN BROWN,
Notary Public,
State of Florida at Large.

My Commission expires 1/13/36.

STATE OF FLORIDA,
County of Leon:

I hereby certify that on this day personally appeared before me J. V. Keen, who, being first duly sworn, says upon oath:

That he is now and has been for some months past Assistant Attorney General of the State of Florida, and that in such capacity he mailed the original and a copy of the above and foregoing Motion to Messrs. Shutts and Bowen of Miami, Florida, counsel of record for appellees in this cause, and that on April 14th, he received a letter from Mes-

srs. Shutts and Bowen returning the original and acknowledging receipt of a copy of the Motion.

J. V. KEEN.

Sworn to and subscribed to before me this 14th day of April, A. D. 1934.

[Seal of Allie Yawn Brown, Notary Public, State of Florida At Large.]

ALLIE YAWN BROWN,
Notary Public,
State of Florida at Large.

My Commission expires 1/13/36.